



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/740,641

12/19/2000

Laurent Bensemana

6670/01093US0

4378

7590

06/06/2005

DARBY & DARBY P.C
805 Third Avenue
New York, NY 10022-7513

EXAMINER

JEANTY, ROMAIN

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/740,641		BENSEMANA, LAURENT	
	Examiner		Art Unit	
	Romain Jeanty		3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Response to Amendment

1. This communication is in response to the Amendment filed March 8, 2005. By the Amendment, claim 1 has been amended. No claims were added or cancelled. Claims 1-25 are pending in the application.

Claim Rejections - 35 USC § 112

2. Applicant's amendment has overcome the 35 U.S.C. 112, second paragraph rejection of claim 2. The rejection has been withdrawn.

Response to Arguments

3. Applicant's arguments filed March 8, 2005 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 18-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Art Unit: 3623

The claims are directed to an algorithm. A careful review of the specification discloses that the invention is directed to a process based solely on the manipulation of an abstract idea.

The claimed invention devoids any recitation that the claimed invention has a practical application within the technological arts. It is noted that the claims are devoid of any technology (i.e. computer processors, etc.). For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere idea in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "process of science, for example) and therefore are found to be non-statutory subject matter.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-10, and 24-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Eldering (U.S. Patent No. 6,298,348).

As per claims 1, 4-8, 12-16, 18, 20-23, and 25, Eldering disclose a consumer profiling system comprising:

Art Unit: 3623

initially establishing a consumer's self-perceived consumption behaviour profile; means for monitoring said consumer's behaviour to create an actual behaviour derived consumption profile (col. 7, lines 11-19), means for comparing said consumer's self-perceived consumption behaviour profile with the consumer's actual behaviour derived consumption profile to identify consistencies and inconsistencies, means for creating a consumer's "true" consumption behaviour profile based on the consumer's self-perceived consumption behaviour profile, the consumer's actual behaviour derived consumption profile (monitoring the consumer's habits and creating an accurate profile of the consumer) (col. 6, lines 37-47).

As per claims 2, and 17, Eldering further discloses wherein said system further comprises means for attributing an appropriate weighting to the consistencies and inconsistencies existing between the said consumer's self-perceived consumption behaviour profile with the tracked said consumer's actual behaviour derived consumption profile (i.e., a weighing factor for weighing particular product purchased at particular time) (col. 10, lines 43-54).

As per claims 3, 19, and 24 Eldering further discloses wherein said means for comparing said initial consumer profile with the tracked behaviour of said consumer further includes means for logging consistencies and inconsistencies of the tracked behaviour of said consumer in a reaction log (storing the consumer's data) (col. 9, lines 29-35).

As per claim 9, Eldering further discloses wherein said means for establishing an initial consumer's self-perceived consumption profile includes a questionnaire to be answered by said consumer (col. 9, lines 51-60).

As per claim 10, Eldering further disclose wherein said means for tracking said

Art Unit: 3623

consumer's actual consumption pattern behaviour include means for tracking inquiries and purchases (col. 6, lines 33-44).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering (U.S. Patent No. 6,684,192) in view of Honarvar (U.S. Patent No. 6,430,542) as set forth in paragraph 10 of the last office action.

Remarks

10. In response to the 101 rejection, applicant has amended claim 18 to recite a computer implemented, however none of the claimed steps is performed by the computer. Therefore, the 35 U.S.C 101 rejection has been maintained.

10. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *a consumer's behaviour is tracked via purchasing habits and other features*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Art Unit: 3623

Furthermore, even if it can be interpreted that the consumer's behaviour is tracked via purchasing habits of the consumer, Eldering does teach that the consumer profile is obtained by monitoring purchase request made by the consumer. Note col. 5 line 54 through col. 6 line 8 of Eldering.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

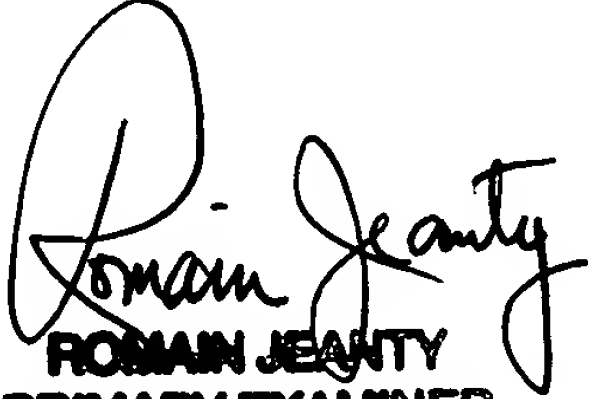
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (571) 272-6732. The examiner can normally be reached on Mon-Thurs 7:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 30, 2005


ROMAIN JEANTY
PRIMARY EXAMINER
Art Unit 3623